IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4292 OF 1996

Dr. Arvind B. Telang & Ors. ...Petitioners.
Vs.
The Charity Commissioner, Mumbai & Ors. ...Respondents.
....
Mr. Y. R. Naik with Mr. Prashant Naik for the Petitioners.
Mr. C. R. Sonawane, AGP for the Respondents.
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CORAM : A. P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

July 1, 2005.

P.C.:

The Camp Education Society is stated to be a Public Trust which was established in 1885. The Trust conducts several schools, Colleges and Institutions where almost 8000 students pursue education under the supervision of 250 members of the teaching staff. The Petitioners claimed that on the date of the institution of the petition in this Court, they were trustees of the Trust. The Fourth, Fifth and Sixth Respondents made an application under Section 41D of the Bombay Public Trusts Act, 1950, for suspension or removal of the Trustees on the ground, inter alia, that change reports had not been filed and capitation fees were being collected. It has been stated that in pursuance of

the interim application, the Joint Charity Commissioner by an order dated 29th January 1991 passed an order of interim suspension and appointed the Deputy Charity Commissioner as an Administrator. The order was set aside by the Additional District Judge, Pune on 26th February 1991. Several hearings are stated to have taken place before the Joint Charity Commissioner, Pune, on the application under Section 41D. The Fourth Respondent is alleged to have made an application before the Charity Commissioner for transfer of the pending case from the file of the Joint Charity Commissioner at Pune (the Second Respondent). The First Respondent passed an ex-parte order on 11th April 1996 transferring the case from the file of the Second Respondent to the Joint Charity Commissioner at Aurangabad. The letter of the Charity Commissioner to the Second Respondent noted that the Fourth Respondent had made complaints against him which were denied by the Second Respondent in his confidential letter dated 21st December 1995. At the same time, the Second Respondent had requested the authorities to transfer the application on his file to any other Joint Charity Commissioner and in pursuance of the request, the case was transferred to the Joint Charity Commissioner at Aurangabad. We find merit in the submission of

the Petitioners that an order of transfer could not have been passed merely on the basis of the complaints made by the Fourth Respondent and particularly in the absence of a notice to the Petitioners. A litigant cannot allowed to choose the forum of his choice. Unsubstantiated allegations cannot form a valid basis for transfer of a case from the file of one judicial authority to another.

2. In the circumstances, we find that the impugned order of the First Respondent is unsustainable. The order dated 11th April 1996 is accordingly quashed and set aside. The proceedings shall stand restored to the file of the Second Respondent who shall now take necessary steps in accordance with law to deal with the proceedings after notice to all the contesting parties before him.

3. The petition is accordingly disposed of. There shall be no order as to costs.

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